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Order Instituting Rulemaking to Create a Consistent Regulatory Framework for the Guidance, Planning, and Evaluation of Integrated Distributed Energy Resources.	Rulemaking 14-10-003 (Filed October 2, 2014)

OPENING COMMENTS OF SIERRA CLUB ON THE REVISED ASSIGNED COMMISSIONER PROPOSAL FOR DISTRIBUTED ENERGY RESOURCE INCENTIVES

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OPENING COMMENTS OF SIERRA CLUB ON THE REVISED ASSIGNED COMMISSIONER PROPOSAL FOR DISTRIBUTED ENERGY RESOURCE INCENTIVES

Pursuant to the Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge issued in this docket on September 1, 2016, Sierra Club respectfully submits these comments on the revised proposal of the Assigned Commissioner.

Introduction

Sierra Club supports the Commission's efforts to test innovations in the utility business model and deploy cost-effective DERs. The revised proposal correctly and thoroughly describes the utilities' incentives to invest in capital rather than cost-effective DERs.[1] As the New York Public Service Commission concluded, "[t]he current framework encourages a natural tendency in utilities toward investments that utilities make and control, versus an inclination to favor the use of third-party resources where they offer economic, reliability and environmental benefits to consumers and the grid."[2] If properly executed, this pilot program will test one mechanism for overcoming these disincentives, test the ability of DERs to deliver grid services cost-effectively, and deploy cost-effective DERs. In addition, Sierra Club strongly urges the Commission to consider broader reforms of the utility role, business models, and financial interests with respect to DER deployment.

In these comments, Sierra Club addresses the questions in the Scoping Memo and offers recommendations for refining and improving the Revised Proposal. For example, the Commission should require the IOUs to conduct three rounds of pilots, allowing adaptation for

[1] Revised Assigned Commissioner Proposal for Distributed Energy Resource Incentives at 2-4.
[2] *Id.* at 3.

lessons-learned from each prior round. The Commission should also clarify and affirmatively state in the Revised Proposal that fossil-fueled distributed generation resources are not eligible to participate in this pilot program.

I. Would the attached pilot proposal accomplish its stated purpose, to test how an earnings opportunity affects the utilities' distributed energy resources sourcing behavior?

Yes, this program would test a method for incentivizing IOU deployment of DERs and delivering cost-effective DERs. The Commission and stakeholders can examine utilities' options in a new setting where capital-intensive solutions are no longer automatically economically advantaged and DERs can compete on a more level field. Sierra Club agrees with the Assigned Commissioner that "the time is right to begin to examine the issues raised by DERs in the context of the existing regulatory framework and utility business model in California."[3]

A. The DER cost is the appropriate default basis for the incentive, but the Commission should consider giving the IOUs the opportunity to apply for an incentive based on avoided cost on a case-by-case basis.

The Assigned Commissioner invited parties to comment on whether the incentive payment should be based on the amount paid to the DER provider or the amount the IOU would have received for the traditional expenditure.[4] Sierra Club shares the Assigned Commissioner's preference for using the payments to the DER provider as the basis of the incentive payment as the default during the pilot phase.

B. The Revised Proposal recommends reasonable percentages for the incentive payments.

Beginning with our initial comments on the original proposal of the Assigned Commissioner, Sierra Club has supported an incentive payment in the range of 2.5% to 3.5%. We were persuaded that a value in this range estimates the value of r-k. But we also emphasized

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[3] *Id.* at 1.
[4] Revised Assigned Commissioner Proposal for Distributed Energy Resource Incentives at 7.

that the proposal has merit even if the incentive is not tied directly to the estimated value of r-k. The logic in the Revised Proposal established a value for the incentive proposal in the range of 3% without reliance on the value of r-k. Sierra Club continues to support the reasonableness of an incentive level in this range, whether or not the proposed incentive is based on r-k.

Different values—3% or 4%, depending on the basis for the incentive—also have merit. As we stated in earlier comments, an incentive should be large enough to produce the desired results, but should be no larger than needed to obtain those results. With the safeguard that a DER project must be cost-effective for consumers while ***including the incentive*** in the cost, Sierra Club is comfortable with incentive percentages in that range. In fact, Sierra Club could support a marginally higher level to address the "scale" issue, as long as consumers are protected from rate impacts.

II. Would an incentive program such as that described in the attached proposal achieve the objective of promoting the cost-effective deployment of distributed energy resources? If not, why not?

Yes, an incentive program like the proposal is very likely to achieve the objective of promoting the cost-effective deployment of distributed energy resources.

The proposal includes several improvements upon the methodologies the Commission ordered the IOUs to adopt in D.03-02-068. First, as discussed above, Sierra Club agrees that earnings opportunities affect utility behavior. Second, the Distribution Planning Advisory Group (DPAG) may play a pivotal role in enabling the IOUs to understand the capabilities of DER to avoid or defer infrastructure projects. Third, the pilot would leverage cost-savings opportunities from the full suite of DERs listed in Public Utilities Code Section 769(a): renewable generation resources, energy efficiency, energy storage, electric vehicles, and demand response. Fourth, the pilot rewards IOUs for using DERs to avoid a variety of non-capital costs,[5] whereas D.03-02-068

[5] Revised Assigned Commissioner Proposal for Distributed Energy Resource Incentives at 8.

only required IOUs to examine distributed generation as an alternative to distribution system investments.

The Commission should clarify the role of the DPAG to ensure the group effectively promotes the cost-effective deployment of DERs. Sierra Club supports Vote Solar's proposal that the DPAG play the following roles:

- Review modeling, assumptions and results for proposed upgrades and investment deferrals;
- Provide input on DER benefits, capabilities, market readiness and portfolios;
- Review grid modernization upgrade proposals; and
- Provide input for planning and pre-solicitation evaluation.[6]

Nonetheless, numerous factors will contribute to the success of the pilot program. Some of these factors are difficult to predict or even understand before the pilot begins. Sierra Club is concerned that the reduction to two projects in the Revised Proposal will unnecessarily limit the impact of the proposal. Instead of reducing the number of pilots, Sierra Club urges the Commission to maximize the learning opportunities in this program by requiring the IOUs to conduct more than two DER procurements, with pilot procurement cycles timed to allow adaptation for lessons-learned from the previous cycle. For example, the Commission could require a second round of pilots to begin 6-8 months into the proposed pilot timeline by reconvening the DPAGs, and a third round of pilots to begin 6-8 months after that.

If the Commission commits to three cycles and requires the IOUs to identify at least two projects in each cycle, each IOU will pilot at least six DER projects. This is similar to Commissioner Florio's original proposal to require at least one proposed project every six months over a two-year pilot, but recognizes that the information gathered during Step 4 of the reissued proposal may be useful at the start of the second round of pilots.[7] While subsequent

[6] Jim Baak, Proposed Role of the DPAG/DPRG, IDER Workshop (Aug. 4, 2016).
[7] *See* Assigned Commissioner's Ruling Introducing a Draft Regulatory Incentives Proposal for Discussion and Comment at 13-14 (April 4, 2016).

rounds of pilots should be the default, the Commission could also modify this requirement if the DPAG reports that there are no further opportunities at this time to avoid distribution investments with solicitations of cost-effective DERs.

In addition to minimum requirements for the quantity of DER projects, the Commission should set requirements for the quality of projects. The Commission may require the IOUs to identify DER projects that provide a range of grid services, affect a certain number of meters, and/or avoid a certain threshold of costs. Such requirements would enhance the opportunities for learning from the pilot program and promote the objective of deploying cost-effective DERs.

III. Does the attached proposal appropriately balance the need to execute the pilot on a reasonable schedule and provide adequate oversight of implied cost to ratepayers?

The proposed schedule and procedure are generally reasonable. Sierra Club offers two suggestions for their refinement.

First, the Commission should consider a two-phase evaluation process to ensure that the pilot provides an opportunity for learning about DER project performance. The pilot evaluation proposed in Step 7 is well-timed for examining the project evaluation and solicitation processes. Sierra Club supports conducting that evaluation without delay. However, an evaluation conducted three months after the contract execution cannot examine the performance of the measure itself. The Commission should consider requiring the IOUs to file a second pilot evaluation report on DER project performance one year later.

Second, the Commission may reallocate time to Step 2 from Step 3, recognizing that identifying projects is a more complicated process than the drafting of an advice letter. The proposed schedule designates two months for both of these steps. Instead, the Commission may designate three months for Step 2 and one month for Step 3.

Sierra Club is uncertain what the Assigned Commissioner means by "implied cost to ratepayers." Replacing more expensive utility investments with less-costly DERs means that the impact of the pilot will save customers money, compared to what might have been. The acquisition of DERs must be overseen, in much the same way that utility investment in traditional resources must be overseen. But it would be incorrect to imply that the result of the pilot would be to create new costs for ratepayers.

IV. Does the pilot proposal effectively complement and leverage recommendations made by the Competitive Solicitation Framework Working Group's August 1, 2016 Report and the Distribution Resource Plan Demonstration C in Rulemaking 14-08-013?

Sierra Club does not have comments in response to this question at this time, but may address this issue in reply comments.

V. Are there changes to the attached proposal that you see as essential and without which you would not support the adoption of the proposal?

The Commission must clarify that fossil-fueled distributed generation resources are not eligible to participate in this pilot program. The Competitive Solicitation Framework Working Group Final Report requested that the full Commission resolve whether fossil-fueled resources are eligible to participate in distributed resources solicitations. Before establishing this pilot, the Commission may not yet confirm that Public Utilities Code Section 769 excludes fossil-fueled generation from distribution resources plans. In that case, the ruling or decision establishing the pilot must explicitly exclude fossil-fueled resources. Any further delay would risk the actual selection of fossil-fueled resources in a pilot solicitation, wasting stakeholders' time and resources and missing an opportunity for a successful pilot.

Commenting on the working group's Final Report, Sierra Club and NRDC explained that the law prohibits inclusion of fossil-fueled technologies in DRP solicitations:

> As a regulatory agency, the CPUC does not have the authority to interpret a statutory provision in a manner that is inconsistent with its plain meaning. Distributed renewable generation resources are the only generation resources eligible for participation in DRPs and other programs authorized by Section 769. Notably, Section 769's qualification that distributed generation resources be "renewable" differs from the statutory authorization for other programs, such as

> SGIP, which refer to "distributed generation" more broadly and do not contain the limitation that these resources be renewable. The explicit use of "distributed renewable generation" is clearly intended to exclude fossil-fueled resources for purposes of DRP procurement. An analogous case is *Southern California Gas Company v. Public Util. Com.* (1979) 24 Cal.3d 653, where the court invalidated the Commission's interpretation that a permissive program should be a required one. Like *Southern California Gas Company*, "[t]he maxim *expressio unius est exclusio alterius* is applicable here." The inclusion of "renewable" to define distributed generation in the DRP means the exclusion of fossil-fueled distributed generation resources. Accordingly, ACR guidance suggesting that a definition explicitly limited to "renewable distributed generation" could conceivably be expanded to include fossil-reliant distributed generation is in direct contravention of Public Utilities Code 769(a) and legally impermissible.[8]

This proceeding will identify mechanisms for deploying cost-effective distributed resources to implement Public Utilities Code Section 769(b)(2).[9] In the very decision expanding the scope of this proceeding to include implementing Section 769, the Commission correctly concluded that "Public Utilities Code Section 769 identifies the items to be included in each of the Utilities' Distribution Resource Plans."[10] Thus, the solicitation of fossil-fueled generation as distributed resources is both contrary to statute and outside the scope of this proceeding.

Conclusion

Sierra Club continues to support the Commission's efforts to implement a utility incentives pilot that will promote the cost-effective deployment of DERs. The clarification that fossil-fueled resources are not eligible to participate is the one essential change to the pilot proposal. In addition, Sierra Club encourages the Commission to accept the following recommendations to better achieve the program's goals:

- Conduct three rounds of pilots, allowing adaptation for lessons-learned from each prior round.
- Clarify the role of the DPAG, consistent with Vote Solar's August 4, 2016, presentation in this proceeding.

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[8] Comments of the Natural Resources Defense Council (NRDC) and Sierra Club on the Competitive Solicitation Framework Working Group Final Report (Aug. 22, 2016) at 9 (footnotes omitted).
[9] D.15-09-022 at 8.
[10] *Id.* at 27.

- Require the IOUs to identify DER projects with qualities the Commission is most interested in testing, such as provision of a variety of grid services and projects that affect a minimum number of meters.
- Reallocate time to Step 2 from Step 3.
- Evaluate the performance of DER projects.

Sierra Club looks forward to participating in the implementation of this pilot program and the Commission's future examinations of the future of the utility role, business models, and financial interests with respect to DER deployment.

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Respectfully submitted,

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